

Section II. (REMARKS)

The pending claims are 1, 4-7, 9, 11-14, and 39-42.

Summary of Interview with Examiner

A telephone interview was conducted between the Examiner and Applicants representative on January 16, 2007. The substance of the interview was to clarify whether the January 4, 2007 Office Action was a final or a non-final Office Action because both boxes were checked on the January 4, 2007 PTOL-326 (Office Action Summary) form. It was determined that the Examiner had inadvertently checked both boxes and that the Office Action mailed on January 4, 2007 is non-final.

Election/Restrictions Under 35 U.S.C. §121 and Request for Rejoinder

The Examiner has imposed a restriction requirement against claims 1, 4-7, 9, 11-14, 42, and 43, and requires that an election be made between:

- I. Claims 1, 4-7, 9, 11-14, 41 and 42, drawn to an etching composition, classified in class 252, subclass 79.1
- II. Claim 43, drawn to a method of producing MEMS devices, classified in class 438, subclass 689.

Applicants hereby elect, with traverse, Group I claims 1, 4-7, 9, 11-14, 41 and 42 drawn to a sacrificial silicon-containing layer etching composition.

The traversal is based on the fact that the rationale for restriction is in error. The Office Action states that "the product as claimed can be used in a materially different process of using that product such as cleaning photoresist residues" (see page 3 of the January 4, 2007 Office Action).

In fact, method claim 43 recites that the SCF-based composition used is the composition of claim 1, and thus is not independent and distinct from claim 1, as is necessary under 35 U.S.C. §121 as a basis for proper restriction.